

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GABRIELLE CARLSON, ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

TARGET ENTERPRISE, INC.,

Defendant.

CIVIL ACTION NO. 18-40139

Mass. Case No. 1885CV00963A
(Mass. Superior Court, Worcester County)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND ALL PARTIES:

Pursuant to 28 U.S.C. §§ 1332, 1441, 1453, Defendant Target Enterprise, Inc. (“Target”), hereby removes to this Court the above-captioned action from the Massachusetts Superior Court, Worcester County, on the following grounds:

1. On or about June 25, 2018, Plaintiff Gabrielle Carlson commenced this civil action in the Massachusetts Superior Court, Worcester County, under Civil Action No. 1885CV00963. A copy of the summons and complaint, together with all the other process, pleadings, and orders served in the state-court action, are attached as Exhibit 1:

- a. Summons (issued July 18, 2018)
- b. Class Action Complaint and Demand for Jury Trial (dated June 20, 2018, filed June 25, 2018)
- c. Civil Action Cover Sheet (dated June 20, 2018, filed June 25, 2018)
- d. Civil Tracking Order (issued June 26, 2018)
- e. Motion to Appoint a Special Process Server Pursuant to Rule 4c of the M.R.C.P. (dated June 20, 2018, filed June 25, 2018, and allowed June 26, 2018)

2. The Complaint was the initial pleading setting forth the purported claims for relief upon which the state-court action is based.

3. The case that the Complaint purportedly stated was and is removable.

4. Target received the summons and complaint by service on July 18, 2018.¹

5. Pursuant to 28 U.S.C. § 1446(b), removal of this action to this Court from the Massachusetts Superior Court is timely, as Target is filing this notice within thirty (30) days after receiving the summons and complaint.

6. This Court would have had original jurisdiction over the state-court action under 28 U.S.C. § 1332(d)(2), and the state-court action may be removed to this Court under 28 U.S.C. § 1453(b). Sufficient grounds exist for removal of this action to this Court from the Massachusetts Superior Court, Worcester County.

A. This Court Has Diversity Jurisdiction Over this Action

7. The United States District Court for the District of Massachusetts has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) on the basis of diversity of citizenship and amount in controversy.

8. First, there is a complete diversity of citizenship. According to her Complaint, Plaintiff Gabrielle Carlson is a citizen of Massachusetts. (Compl., ¶ 7 at 2.)

9. Defendant Target Enterprise, Inc., is a citizen of Minnesota, as it is a Minnesota corporation with a principal place of business in Minnesota. (*See* Compl., ¶ 8 (listing incorrect street address and city but correct state).)

10. Second, the amount in controversy exceeds the sum or value of \$5,000,000.

a. On April 19, 2018, Ms. Carlson's attorney Sergei Lemberg mailed to Target by certified mail a written demand for relief pursuant to Mass. Gen Laws ch. 93A, § 9(3). Target received Mr. Lemberg's letter on April 24, 2018.

¹ Target does not waive its right to contest whether service of process was appropriately performed.

- b. On May 10, 2018, pursuant to Mass. Gen Laws ch. 93A, § 9(3), Target made a written tender of settlement to Ms. Carlson through Mr. Lemberg, offering to pay \$1,000 as to her claims.
- c. Ms. Carlson did not accept Target's written tender of settlement.
- d. Upon receiving the complaint, Target learned of the proposed class, (Compl., ¶ 23 at 5), and searched its records with a view toward estimating the proposed class's size. Based on its preliminary investigation (and subject to revision as additional information becomes available), Target estimates that the proposed class consists of about 45,781 members.
- e. Ms. Carlson's rejection of Target's offer to pay \$1,000 as to her claims establishes that, in her view at least, the matter in controversy with respect to her individual claim exceeds the sum or value of \$1,000. Ms. Carlson alleges that "[her] claims are typical of the claims of the class members," (Compl., ¶ 29 at 6), in which case the matter in controversy with respect to the proposed class's claims therefore exceeds the sum or value of \$5,000,000.

B. Removal of the Action to This Court is Proper

11. The state-court action is removable under 28 U.S.C. § 1441(a) & § 1446, and under 28 U.S.C. § 1453(b).

12. The state-court action is not a non-removable action under 28 U.S.C. § 1445 or under 28 U.S.C. § 1453(d).

13. Additionally, venue properly lies in the District of Massachusetts because Ms. Carlson is a citizen of Massachusetts whose claims arise out of alleged violations of Massachusetts law, and Ms. Carlson commenced this action initially in Worcester County, Massachusetts.

14. Promptly after filing this notice, Target will give written notice to the adverse Party, and will file a copy with the Clerk of the state court, in accordance with 28 U.S.C. § 1446(d).

15. Certified or attested copies of all records and proceedings before the Massachusetts Superior Court, Worcester County, will be filed with this Court within 28 days in accordance with LR 81.1.

16. In submitting this Notice of Removal, Target reserves all defenses.

WHEREFORE, Defendant Target Enterprise, Inc., respectfully prays that the state court proceed no further, and that any further proceedings in this action occur in the United States District Court for the District of Massachusetts.

Respectfully submitted,

The Defendant,
TARGET ENTERPRISE, INC.
By: Its Attorneys

/s/ Jordan S. O'Donnell

Jordan S. O'Donnell, BBO #684001
HINSHAW & CULBERTSON LLP
53 State Street
27th Floor
Boston, MA 02109
Ph. 617-213-7000
Fax 617-213-7001
jodonnell@hinshawlaw.com

in association with

BARNES & THORNBURG LLP
Brian Melendez, No. 0223633 (Minn.)
(application for admission pro hac vice
forthcoming)
Suite 2800
225 South Sixth Street
Minneapolis, MN 55402-4662
Ph. 612.367.8734
Fax 612.333.6798
brian.melendez@btlaw.com

Dated: August 16, 2018

CERTIFICATE OF SERVICE

I, Jordan S. O'Donnell, hereby certify that on this 16th day of August, 2018, I served a true and accurate copy of the foregoing document to counsel of record by overnight mail and e-mail as follows:

Sergei Lemberg, Esq.
LEMBERG LAW, LLC
43 Danbury Road
Wilton, CT 06897

/s/ Jordan S. O'Donnell

Jordan S. O'Donnell